

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Bilateral Agreement Between United States
Postal Service and Posten Norge AS (MC2010-34)
Negotiated Service Agreement

Docket No. CP2014-35

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE
NOTICE CONCERNING ADDITIONAL INBOUND COMPETITIVE
MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT (NORWAY POST)

(March 21, 2014)

The Public Representative hereby provides comments pursuant to Order No. 2019.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of its entry into an additional bilateral agreement for inbound competitive services with Posten Norge AS (Norway Post).² The modification, Modification Two extends the Norway Post Agreement for an indefinite period unless terminated or amended. The Postal Service thus seeks to include Modification Two within the inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-14) product. Notice at 1.

The bilateral agreement with Norway Post (Norway Post Agreement), establishing a rate for delivery of inbound Air Parcel Post (Air CP) in the United States, was initially filed in Docket No. CP2011-69.³ In Order No. 546, the Commission approved the addition of the Inbound Competitive Multi-Service Agreements with

¹ PRC Order No. 2019, Notice and Order Concerning Additional Modification of Inbound Competitive Multi-Service Agreement with Norway Post, March 14, 2014.

² United States Postal Service Notice of Filing Additional Functionally Equivalent Inbound Competitive Multi-Service Agreement with Norway Post, March 13, 2014, (Notice) at 1.

³ See Notice of the United States Postal Service of filing additional Functionally Equivalent Agreement, Docket No. CP2011-69, August 8, 2011.

Foreign Postal Operators 1 product to the competitive product list, and included within that product an agreement with Koninklijke TNT Post BV and TNT Post PakketService Benelux BV (TNT Agreement).⁴ In Order No. 840, the Commission accepted the Postal Service's designation of the TNT Agreement as the baseline agreement for purposes of determining whether future agreements are functionally equivalent.⁵ The Commission subsequently added bilateral agreements with the China Post Group (China Post 2011 Agreement) and Posten Norge AS (Norway Post Agreement) to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.⁶ The Commission also approved bilateral agreements with the Australian Postal Corporation (Australia Post Agreement), the Canada Post Corporation (Canada Post Agreement), and the Hongkong Post (Hongkong Post Agreement).⁷ More recently, the Commission determined that the bilateral agreement with Royal PostNL BV, a successor agreement to the TNT Agreement, should be included within the product.⁸

The Norway Post Agreement establishes prices and classifications not of general applicability for the delivery of inbound Air Parcel Post (Air CP) in the United States. The Norway Post Agreement as modified (Modification Two), is intended to become effective April 1, 2014 and remain in effect for an indefinite period or until terminated by either party. Notice at 1.

⁴ PRC Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

⁵ PRC Order No. 840, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-69, September 7, 2011, at 5.

⁶ PRC Order No. 859, Order Concerning An Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-68, September 16, 2011; PRC Order No. 840, *supra*.

⁷ PRC Order No. 956, Order Concerning An Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2012-1, November 9, 2011; PRC Order No. 1088, Order Adding an Additional Bilateral Agreement to Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Product, Docket No. CP2012-4, December 30, 2011. PRC Order No. 1580, Order Approving An Addition Inbound Competitive Multi-Service Agreement with Foreign Postal Operators Negotiated Service Agreement, Docket No. CP2013-22, December 17, 2012.

⁸ PRC Order No. 1593, Order Approving Addition of Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Royal PostNL BV), Docket No. CP2013-24, December 16, 2012.

COMMENTS

The Public Representative has reviewed the Norway Post Agreement and the supporting financial model filed under seal that accompanied the Postal Service's Notice. Based upon that review, the Public Representative concludes that the Norway Post Agreement (Modification Two) is functionally equivalent to the Norway Post Agreement (Modification One). Moreover, the negotiated inbound rates offered in the Norway Post Agreement (Modification Two) are likely to generate sufficient revenue to cover its attributable costs at least in its initial year.

Functional Equivalence. The Postal Service is using the predecessor Norway Post Agreement as the baseline for the purpose of determining the functional equivalence of Modification Two with other agreements previously filed and included in the product grouping for Inbound Competitive Multi-service Agreements with Foreign Postal Operators. The Postal Service asserts that Modification Two is functionally equivalent to the Norway Post Agreement and Modification One because it demonstrates similar cost and market characteristics. The Postal Service further asserts that the inbound service offered through Modification Two, Inbound Air Parcels, fits within the proposed language for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1. Therefore, Modification Two, Modification One and the Norway Post Agreement conform to a common description.

The most important difference compared to the baseline Norway Post Agreement concerns the term of the Norway Post Agreement. The Norway Post Agreement (Modification Two) does not establish a contract term with an ending date certain. In this regard, either party may terminate the Agreement "without cause" upon 90 day advance written notice.

The Postal Service "does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the agreements." Notice at 5. The Public Representative agrees that these differences do not alter the conclusion that the Norway Post (Modification Two) Agreement is

functionally equivalent to the baseline Norway Post. The Norway Post Agreement is designed to operate in perpetuity, absent either party invoking its early termination privilege. Assuming the Agreement is not terminated, It's not clear whether Modification Two excuses the Postal Service from filing a notice pursuant to 39 C.F.R. § 3015.5 in the event new rates are negotiated. At a minimum, the Commission should request from the Postal Service an explanation as to its plans to provide notice of such a rate change.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service must demonstrate that the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product covers attributable costs, which precludes the subsidization of competitive products by market dominant products and thereby makes an appropriate contribution to the institutional costs of the Postal Service. The Postal Service's financial model indicates that the negotiated rates in the Norway Post Agreement will generate sufficient revenues to cover its attributable costs, at least in its initial year and therefore will not degrade the cost coverage of the product. However, this contract contains an indefinite term at the same rates as were previously in effect for Modification One, which were effective from October 1, 2012 through March 31, 2014. Thus, cost coverage under this contract will most likely decline over time. In addition, this contract does not appear to contain any price escalation clauses short of termination of the contract, which often occur in domestic competitive contracts with terms greater than one year. The Commission should monitor the actual cost coverage achieved under this contract in the Postal Service's next Annual Compliance Determination.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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